UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETS

UNITED AIRLINES, INC., a Delaware Corporation, *Plaintiff,* v. JOSHUA GREGORY ALLEN, an individual, a/k/a JOSHUA GREGORY a/k/a ALLEN GREGORY a/k/a GREGORY JOSHUA a/k/a JOSHUA ALLEN and OMAR SAFAR HALABI, an individual, a/k/A OMAR SAFAR, *Defendants.*	CIVIL ACTION NO. 09-CV-10394 (NMG)

Defendant Omar Safar Halabi's Memorandum In Opposition to Plaintiff's Motion to Seal

In its motion to seal its opposition to Defendant Hablis's motion to dismiss, Plaintiff United Airlines, Inc. ("United") seeks to continue to seal the proceedings it voluntarily commenced (having already sealed portions of the complaint on an *ex parte* basis) notwithstanding that there is no trade secret or otherwise confidential business information discussed in any of the pleadings submitted in this matter. Nor is there any sensitive personal or private information at issue. Thus, United seeks unprecedented secrecy in federal judicial proceedings that concern Defendant Halabi's use of exclusively publicly available information. With its four paragraph motion, United seeks to improperly trample on the common law and First Amendment rights of public access to judicial proceedings. The federal courts are not in the business of conducting private arbitrations to serve a company's business interest in avoiding publicity. Companies put mandatory arbitration provisions in contracts with their customers when they seek to shield otherwise public information concerning their transactions from the public view, but United failed to do so here and should not now be permitted to use this Court to conduct a private arbitration.

Moreover, United's decision to sue two individuals for taking advantage of its aggressive overbooking practices should not be kept secret, especially given that the specific factual allegations it seeks to shield from the public's view demonstrate that Mr. Halabi obtained the travel vouchers at issue here without breaching United's contract of carriage or accessing any of United's confidential business information. Keeping the allegations under seal unfairly impugns the reputation of Mr. Halabi, leaving observers of the public record to speculate whether Mr. Halabi may have obtained United's trade secrets by hacking into its computers or engaging in other criminal misconduct. The damage to Mr. Halabi's reputation already has been done by the filing of the redacted complaint. It can be corrected only by denying United's current motion to seal, and unsealing and unredacting the entire record, so the details of those allegations are not left to conjecture. Mr. Halabi did not engage in any such misconduct (or any other misconduct), and is willing to let his actions be judged not just by this Court but also by the general public. Indeed, his reputation depends on the public knowing the true nature of the allegations against him. Moreover, Mr. Halabi has an interest in the opportunity for public observation of his treatment by the judiciary. *See Littlejohn v. Bic Corp.*, 851 F.2d 673, 678 (3d Cir. 1988) ("As with other branches of government, the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice … [and] should provide the public with a more complete understanding of the judicial system and a better perception of its fairness.").

United's request here would be the equivalent of the recording industry seeking to seal the proceedings it has brought against individuals who have downloaded music on the internet –

on the specious grounds that other individuals might download music in the same way as the individual defendants did there. Indeed, United's argument would permit the sealing of any allegations of purportedly fraudulent or unlawful schemes susceptible to replication by other members of the public – even where, as here, the alleged misconduct did not involve the use of any private or confidential information. That has never been and cannot be the law.

Recently, such "Goliath versus David" lawsuits have caught the eye of the public, and have generated negative publicity for these Goliaths. This may be the true motive behind United's motion to seal, especially given that the pleadings and materials submitted to the Court in this lawsuit will no doubt extensively discuss the extent of United's overbooking practices, a practice already unpopular with the general public. If Defendant Halabi has engaged in any unlawful conduct as United alleges (which he has not), the laws prohibiting such conduct (not to mention the public disclosure of the details of this lawsuit) would serve as both a deterrent to others, and a means for United to obtain appropriate redress if such a deterrent proved ineffective.

But perhaps most importantly, United can obtain the very protection from "copy cats" it seeks by simply modifying its contractual arrangements with its passengers in any number of ways. The "problem" United faces is a problem of its own creation, and its remedy lies entirely within its own reach. For example, it could modify the terms and conditions of the type of fares at issue here (currently such information is sealed from the public's view) so that passengers using such fares are ineligible for vouchers when volunteering to be bumped from overbooked flights, or, like other airlines, preclude the transfer of its travel vouchers altogether. Moreover, it is incredibly unlikely that United will not alter such business practices regardless of the outcome of this litigation. Indeed, United already offers non-transferable vouchers in certain situations.

See United Airline's Contract of Carriage, http://content.united.com/ual/asset/COC24junfinal.pdf at 38, Note 2 (last updated June 23, 2009). Because these proceedings concern the use of exclusively public information and could severely damage the reputation of Mr. Halabi, continuing to seal any portion of these proceedings is unwarranted when United can so readily obtain the protection it seeks through less drastic measures entirely within its own control.

I. Relevant Procedural History

The redacted version of the complaint currently in the public record in this case accuses Mr. Halabi of fraud and tortiously interfering with United's business relationships. Docket No. 7. United alleges that Mr. Halabi's conduct caused damages in excess of $75,000. *Id.* at ¶55. However, only the redacted allegations describe the manner in which Mr. Halabi allegedly fraudulently and wrongfully obtained the travel vouchers. None of the details are provided in the public version of the complaint. Thus, although the complaint accuses Mr. Halabi of wrongful and fraudulent conduct causing significant damages to United, no member of the public can ascertain what Mr. Halabi allegedly did that constitutes such purportedly fraudulent or otherwise unlawful conduct.

II. United's Claims Should Be Adjudicated in Public Judicial Proceedings

> Many a litigant would prefer that the subject of the case … be kept from the curious (including its business rivals and customers), but the tradition that litigation is open to the public is of very long standing. … People who want secrecy should opt for arbitration. When they call on the courts, they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials. Judicial proceedings are public rather than private property, … and the third-party effects that justify the subsidy of the judicial system also justify making records and decisions as open as possible. What happens in the halls of government is presumptively public business. Judges deliberate in private but issue public decisions after public arguments based on public records. The political branches of government claim legitimacy by election, judges by reason. Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat, which requires compelling justification.

Union Oil Co. of California v. Leavell, 220 F.3d 562, 567-68 (7th Cir. 2000) (Easterbrook, J.) (citations omitted). As the Third Circuit explains, "[b]y submitting pleadings and motions to the court for decision, one enters the public arena of courtroom proceedings and exposes oneself, as well as the opposing party, to the risk … of public scrutiny." *Leucadia, Inc. v. Applied Extrusion Tech., Inc.*, 998 F.2d 157, 164 (3d Cir. 1993). "Here, as in so many other instances, justice is better served by sunshine than by darkness." *Fed.l Trade Comm'n v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987).

A. The Common Law Creates a Presumptive Right of Public Access to Court Filings.

"Courts long have recognized 'that public monitoring of the judicial system fosters the important values of quality, honesty and respect for our legal system.' … This recognition has given rise to a presumption that the public has a common-law right of access to judicial documents." *In re Providence Journal Co.*, 293 F.3d 1, 9-10 (1st Cir. 2002) (citations omitted); *see also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 599 (1978); *Standard Fin. Mgmt.*, 830 F.2d at 410 (1st Cir. 1987) (recognizing common law right of access). The presumption of openness applies to civil as well as criminal proceedings. *Standard Fin. Mgmt.*, 830 F. 2d at 408 n.4.

The public's common law right of access "attaches to those documents which properly come before the court in the course of an adjudicatory proceeding and which are relevant to the adjudication." *Id.* at 412-13; *see also In re Providence Journal*, 293 F.3d at 9-10; *Anderson v. Cryovac*, 805 F.2d 1, 13 (1st Cir. 1987) (common-law right of access extends to "materials on which a court relies in determining the litigants' substantive rights").[1]

[1] Once documents are presented for consideration by the court, they are considered part of an adjudicatory proceeding. "To hold otherwise would place [appellate courts] in the position of attempting to divine and dissect the

The public's right of access to judicial records is "so basic to the maintenance of a fair and open judicial system and to fulfilling the public's right to know, [that it] cannot be easily overcome." *Standard Fin. Mgmt.*, 830 F. 2d at 412-13. The party advocating secrecy bears "the heavy burden of exhibiting the existence of special circumstances adequate to overcome the presumption of public accessibility." *Id.* at 410-11, 413 ("The objectors--those seeking to keep the datum hidden from view--must carry the devoir of persuasion."). And although the common law right of access is not absolute, it also "is no mere paper tiger." *Id.* at 410. "When faced with a claim that cause sufficiently cogent to block access has arisen, it falls to the courts to weigh the presumptively paramount right of the public to know against the competing private interests at stake." *Id.* at 410-11. "The citizens' right to know is not lightly to be deflected." *Id.* at 410. Accordingly, "[o]nly the most compelling reasons can justify non-disclosure of judicial records." *Id.* at 410 (quoting *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)).

B. The First Amendment Also Creates a Presumptive Right of Public Access to Court Filings.

When the First Amendment right of access applies, the presumption of openness is even stronger than the common-law presumption. *In re Providence Journal*, 293 F.3d at 11. The First Amendment triggers strict scrutiny, where the presumption can be overcome only by a showing of "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* at 10-11; *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 606-07 (1982) ("Where … the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly

exact thought processes of judges … -- a task more suitable to a clairvoyant than to an appellate court. To avoid the necessity for such mindreading, … relevant documents which are submitted to, and accepted by, a court of competent jurisdiction in the course of adjudicatory proceedings, become documents to which the presumption of public access applies." *Standard Fin. Mgmt.*, 830 F. 2d at 409.

tailored to serve that interest.”). The Court must make specific, on-the-record findings to justify the sealing. *In re Providence Journal*, 293 F.3d at 15. The First Circuit has suggested, but never explicitly held, that it would follow other circuits in extending the First Amendment right of access to filings in civil proceedings.

In *Anderson v. Cryovac, Inc.*, the First Circuit considered whether the public has a First Amendment right of access to civil discovery documents. 805 F.2d 1, 11-12 (1st Cir. 1986). The Court analyzed the question by applying the same test set forth by the Supreme Court in *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555 (1980), which held that there is a First Amendment right to access to records in criminal proceedings. That test asks “whether the proceedings in question historically have been open to the public, and whether access plays a particularly significant role in the functioning of the judicial process.” *Anderson*, 805 F.2d at 12.

Although the First Circuit rejected a First Amendment right of access to civil discovery materials (for which there is no tradition of public access), it explicitly distinguished the case under consideration from other cases in other circuits granting a First Amendment right of access to “pretrial motions that were dispositive of the litigants’ substantive rights.” *Id.* at 11. The First Circuit’s analysis suggests that First Amendment rights would attach to certain filings, such as “where the material is important and the decision to which it is relevant amounts to an adjudication of an important substantive right.” *Id.* It noted that “a request to compel or protect the disclosure of information in the discovery process” is not the same as “a request for a disposition of substantive rights.” *Id.* at 13.

Here, there can be no dispute that there is a tradition of public access to civil filings such as complaints and pleadings related to dispositive motion practice. In addition, public access to such filings plays a particularly significant role in the functioning of the judicial process. *See* *generally Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 387 n. 15 (1979) ("in some civil cases the public interest in access, and the salutary effect of publicity, may be as strong as, or stronger than, in most criminal cases."); *Standard Fin. Mgmt*, 830 F.2d at 410 ("Public access to judicial records and documents allows the citizenry to 'monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system'"); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984) ("Public access to civil trials, no less than criminal trials, plays an important role in the participation and the free discussion of governmental affairs."). "Although courts have a number of internal checks, such as appellate review by multi-judge tribunals, professional and public monitoring is an essential feature of democratic control. … Without monitoring, moreover, the public could have no confidence in the conscientiousness, reasonableness, or honesty of judicial proceedings." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995).

In sum, the historical tradition of access to the records of civil proceedings, and the positive role that public access plays in the functioning of the judicial system, compel the conclusion that the public has a First Amendment right of access to the records of civil proceedings that concern the adjudication of substantive rights. Other circuits and state courts have expressly held this. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120-23 (2d Cir. 2006) (public has First Amendment right of access to summary judgment records in civil cases, including before the motion is decided, because an "adjudication is a formal act of government, the basis of which should, absent exceptional circumstances, be subject to public scrutiny.") (citations omitted); *Rushford v. New York Magazine, Inc.*, 846 F.2d 249, 252-53 (4th Cir. 1988) (because "summary judgment adjudicates substantive rights" the more "rigorous First Amendment standard should also apply to documents filed in connection with a summary judgment motion in a civil case”); *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 659 (3d Cir. 1991) (“[T]he First Amendment, independent of the common law, protects the public's right of access to the records of civil proceedings”); *In re Continental Illinois Sec. Litig.*, 732 F.2d 1302, 1308-10, 1314 (7th Cir.1984) (presumption of public right of access is of “constitutional magnitude” and applies to filings seeking to terminate derivative claims, even if filed pursuant to a protective order); *Grove Fresh Distrib., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) ("[t]he First Amendment presumes that there is a right of access to proceedings and documents which have 'historically been open to the public' and where the disclosure of which would serve a significant role in the functioning of the process in question"); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1177-1179 (6th Cir. 1983) (recognizing First Amendment right of access to court documents in civil trials), *cert. denied*, 465 U.S. 1100 (1984); *see generally Westmoreland v. Columbia Broadcasting System, Inc.*, 752 F.2d 16, 23 (2d Cir. 1984) (asserting that "the First Amendment does secure to the public and to the press a right of access to civil proceedings"); *NBC Subsidiary (KNBC-TV), Inc. v. The Superior Court*, 980 P.2d 337, 358-59 (Cal. 1999) (finding First Amendment access to civil proceedings and noting that “[n]o case to which we have been cited or of which we are aware suggests, much less holds, that the First Amendment right of access as articulated by the high court does not apply, as a general matter, to ordinary civil proceedings.”). This Court should likewise subject United’s request to keep these matters sealed to the strictest of scrutiny.

C. United Cannot Meet Its Burden of Demonstrating a Compelling Justification for the Sealing of the Motion to Dismiss Pleadings and Complaint

Regardless of whether the Court applies the First Amendment or common law test for the sealing of the pleadings in conjunction with Mr. Halabi’s motion to dismiss, United cannot meet its heavy burden to keep the documents secret. *Standard Fin. Mgmt.*, 830 F. 2d at 410-11, 413;

In re Providence Journal, 293 F.3d at 10-11. There is neither a compelling reason nor an important government interest that would warrant keeping the allegations against Mr. Halabi under seal.

First, United does not and cannot allege that Mr. Halabi's purportedly unlawful scheme involved any trade secrets, confidential business information, sensitive personal information or otherwise non-public information. Unwanted publicity of the alleged misconduct cannot form the basis for sealing the information, when the information used in the alleged unlawful scheme does not involve any trade secrets or other private information. *See Vassiliades v. Israely*, 714 F. Supp. 604, 606 (D. Conn. 1989) (refusing to seal complaint given absence of proprietary information at issue, noting that "[e]very lawsuit has the potential for creating some adverse or otherwise unwanted publicity … [which] is simply one of the costs attendant to the filing of an action."). If United wanted private arbitration with its customers over such disputes, it should have written its contracts accordingly.

Moreover, even if the factual allegations did concern some private or confidential business information (which they do not), that would still not render sealing appropriate. United would still need to overcome the presumption against disclosure. Given the adjudication of the motion to dismiss will depend on the currently sealed factual allegations, United would be unable to overcome that presumption. The basis for a court adjudication is not to be kept secret. For example, in *Standard Financial Management*, the First Circuit held that sensitive private financial information concerning the defendants should be disclosed because it was considered by the Court in adjudicating the matter. *Standard Fin. Mgmt.*, 830 F.2d at 412. In so ruling, the First Circuit cited *Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982), with approval noting that "'a naked conclusory statement of feared injury falls woefully short of the kind of showing which raises even an arguable issue' as to impoundment." *Standard Fin. Mgmt.* 830 F.2d at 412. In *Joy*, the Second Circuit refused to seal a private company document that detailed poor financial management, which, the company complained would cause it commercial harm if it were to be disclosed to the public. *Joy*, 692 F.2d at 894. The Second Circuit scoffed at the argument, noting such information was "hardly a trade secret." *Id.* ("Since it is the basis for the adjudication, only the most compelling reasons can justify the total foreclosure of public and professional scrutiny.").

Similarly, in *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 534 (1993), the First Circuit rejected the argument that a deposition videotape could be sealed because it dealt with "highly confidential and proprietary" information, such as "the internal procedures by which [the company] evaluates a product, market tests products and ultimately purchases the product for incorporation into its product line," "specific business plan[s]," and "customer profile information." *Id.* The Court noted that "at most only trade secret or like material of unusual importance" could be sealed. *Id.* After reviewing the deposition transcript, the First Circuit rejected any sealing at all, noting that "the videotape contains nothing remotely comparable to, say, the formula for Coca Cola or even an important trade secret" and that although the company's "business methods are discussed … there are no startling revelations." Thus, even if the factual allegations at issue did concern confidential business information (which they do not), United could hardly overcome the presumption against public disclosure.

Second, Mr. Halabi has important interests that must also be considered in weighing the competing factors. Mr. Halabi has been accused of serious misconduct that allegedly caused tens of thousands of dollars of damages to United. However, any person currently reviewing the publicly available documents would be left to speculate as to how Mr. Halabi allegedly carried out such a scheme, and could readily imagine conduct far worse than merely locating an embarrassing loophole in United's contract of carriage and ticketing procedures (made possible by United's particularly egregious overbooking practices). Mr. Halabi has not improperly accessed confidential business information, hacked into United's computers, or engaged in any other similar form of misconduct. The public should not be permitted to speculate as to the seriousness of the allegedly "fraudulent" conduct here, which could only lead to conclusions of far more egregious conduct than the actual allegations against Mr. Halabi.

Third, United has asserted state law tort claims that United itself has successfully argued are preempted by federal law for over two decades. In doing so, United has obtained immunity from its passengers' fraud claims by arguing that the plain language of the Airline Deregulation Act ("ADA") eliminates all state regulatory authority (including state law claims in lawsuits) concerning the subject matters of ticketing and overbooking. This issue is extensively discussed in Mr. Halabi's pleadings in connection with his motion to dismiss. Docket Nos. 18-19 (attaching samples of United's briefs arguing the ADA's plain language preempts all state law claims, and that courts must adhere to a literal interpretation of the ADA's plain language).[2] Notwithstanding its previously inconsistent litigation position, United now argues that the ADA's preemption provision's plain language – which does not distinguish between claims against airlines and claims against passengers – should be ignored, and that claims involving the

[2] Mr. Halabi filed his motion to dismiss and accompanying memorandum under seal only at the request of the Clerk of this Court, as the covering letter so indicated. Prior to filing, Mr. Halabi's counsel called the Clerk to confirm that there was no ruling requiring that the documents be filed under seal. In that conversation, Mr. Halabi's counsel stated his position that he did not believe that such pleadings should be sealed, and informed the Clerk that he was unwilling to move to seal the documents. Notwithstanding the absence of any order requiring the filings to be under seal, the Clerk instructed Mr. Halabi's counsel to file the documents under seal in light of the Court's previous order sealing some of the complaint's allegations, indicating that the Clerk would "fall on his sword" if the Court took issue with the filing (in an effort to err on the side of caution). Furthermore, after this Court granted United's motion to seal (see Clerk's Notes Aug. 5, 2009), Mr. Halabi's counsel again called the Clerk of the Court indicating that Mr. Halabi would be filing an opposition to that motion within the time frame provided under Local Rule 7.1, and that Mr. Halabi continued to oppose the sealing of pleadings in this action. Thus, Mr. Halabi's previous filing under seal is irrelevant to the resolution of the present motion.

very same subject matters that United previously contended were preempted are actually not preempted if those claims are brought by airlines against passengers. The public should not be deprived of its right to know that United seeks the inequitable application of the ADA's preemption provision so that only passengers lose their state law rights – contrary to the plain language of the statute. In addition, United's current and future litigation adversaries should not be denied access to United's briefs here that reflect its recent change of heart – as United now believes that state law tort claims concerning these subject matters are actually not subject to federal preemption.

Moreover, if the Court were to agree with United, it would be essential that the public have access to such information so that citizens could exercise their First Amendment rights to seek redress through their elected officials, and cast light on the judiciary's refusal to treat passengers and airlines equally, consistent with the plain language of the ADA. As the Sixth Circuit explained:

> [P]ublic access provides a check on courts. Judges know that they will continue to be held responsible by the public for their rulings. Without access to the proceedings, the public cannot analyze and critique the reasoning of the court. The remedies or penalties imposed by the court will be more readily accepted, or corrected if erroneous, if the public has an opportunity to review the facts presented to the court. In his concurrence, Justice Brennan emphasized this link between access to the courtroom and the popular control necessary in our representative form of government. [citing *Richmond Newspapers*, 448 U.S. at 592]. Although the federal judiciary is not a majoritarian institution, public access provides an element of accountability. One of the ways we minimize judicial error and misconduct is through public scrutiny and discussion.

Brown & Williamson, 710 F.2d at 1178. Determination of such important substantive rights should not be carried out in secret. Surely if this case proceeds to trial, United will not receive a private adjudication of the claims leveled against Mr. Halabi. For the same reasons, public access is required at this stage of the proceedings, which brings with it the potential for a final adjudication of United's claims.

Fourth, a complaint alleging unlawful conduct always discloses the means by which the purportedly unlawful conduct was carried out, particularly in the case of an alleged fraud, which must be pled with particularity under Federal Rule of Civil Procedure 9(b). If United's argument were successful, the courts would be overflowing with sealed documents in thousands of cases. For example, should the recording industry be able to seal proceedings against individuals downloading music from the internet? If so, the recording industry could avoid significant adverse publicity by arguing that disclosure of the manner in which the individuals downloaded the music could cause them future harm if others chose to replicate the conduct at issue.[3] The argument is absurd. The law itself serves to deter and remedy any such allegedly unlawful conduct. This case should be no exception.

Finally, United's only justification for sealing these allegations is its entirely speculative fear of future "copy cats" that could allegedly further injure United. This justification is paper thin, given United's belief that the conduct is already prohibited by law. Moreover, United has within its power the ability to preclude any "copy cats" by making minor modifications to its business practices, modifications it will likely make regardless of what occurs in this litigation. Most simply, United could change the terms and conditions of the fares at issue here so that passengers traveling on such fares are ineligible to volunteer to be bumped from overbooked flights, and thereby restrict the award of its travel vouchers. Alternatively, like other airlines, it could only issue vouchers which are non-transferable. There are a variety of other actions United could take to further prevent "copy cats," as evidenced by the fact that the other airlines'

[3] This is not a purely hypothetical or academic argument. The recording industry has sought to limit the ease with which the public can access information about the events occurring in such proceedings. *In re Sony BMG Music Entm't*, 564 F.3d 1 (1st Cir. 2009).

business practices have not rendered them susceptible to this purportedly “fraudulent” scheme. United, like any other market participant, should, and likely will, adapt its market place conduct to compete more effectively with other airlines and advance its own interests in selling air travel services.

In sum, the sealing of judicial records implicates important common law and constitutional rights and is presumptively disfavored. United’s attempt to seal allegations in connection with Mr. Halabi’s motion to dismiss that do not concern any proprietary, confidential or other sensitive private information is unprecedented and unwarranted. There is no compelling interest that could defeat the presumptive right of access to these records, and United’s motion should be denied. In addition, all filings in this matter should be unsealed (both previous filings and future filings) unless such filings are shown to actually reveal proprietary, confidential, or other sensitive private information. United’s attempt to convert this federal Court into its own private arbitrator to further its business interests is without justification. It chose to come to this public Court to assert these claims, and it should not be permitted to make public accusations of serious wrongdoing against Mr. Halabi without subjecting its allegations of “unlawful” conduct to the same public scrutiny. Moreover, any adjudication of this dispute should not occur in secret, with the Court’s reasons and parties’ submission concealed from the public.

III. Conclusion

For the reasons stated herein, Defendant Halabi requests that the Court deny United’s Motion to File Opposition to Motion to Dismiss Under Seal, and that the Court order the unsealing of all pleadings in this matter, as such a result would be logically compelled by a ruling denying United’s motion to seal.

August 14, 2009

Respectfully submitted,

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/s/ Todd S. Heyman________
Todd S. Heyman